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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IMPLICIT NETWORKS, INC.,

Plaintiff,

v.

JUNIPER NETWORKS, INC.,

Defendant.

) Case No. 3:10-cv-4234-SI

) **JUNIPER'S OPPOSITION TO**
) **PLAINTIFF IMPLICIT NETWORKS,**
) **INC.'S MOTION FOR A PROTECTIVE**
) **ORDER AND 30 DAY DISCOVERY**
) **EXTENSION**

) Action filed: September 20, 2010

1 In its most recent discovery motion (Dkt. No. 95), Plaintiff Implicit Networks, Inc.
 2 (“Implicit”) seeks the following relief against Juniper:

- 3 1. A protective order relieving Implicit from responding to Juniper’s Third Set
 4 of Interrogatories (which, in fact, is only one interrogatory);
- 5 2. A protective order limiting the combined length of the Rule 30(b)(6)
 6 deposition of Implicit on topics specific to Juniper and the individual
 7 deposition of the named inventor on Implicit’s patents, Edward Balassanian,
 to a total of two hours and twenty minutes (instead of seven hours); and
- 8 3. An order extending all fact and expert discovery deadlines by 30 days.

9 Juniper has attempted to work with Implicit to address its concerns about discovery—and
 10 it remains willing to do so—but there is clearly no reason for the Court to impose Implicit’s
 11 proposed sweeping changes to the limitations imposed by the Federal Rules of Civil Procedure
 and this Court’s prior scheduling order.

12 **1. Juniper’s Third Set of Interrogatories**

13 Implicit’s claim for relief from Juniper’s Third Set of Interrogatories is based on a vague
 14 claim of undue burden. But this “set” of interrogatories is really just a single interrogatory—a
 15 contention interrogatory requesting explanation of one specific, focused aspect of Implicit’s
 16 infringement claims (*i.e.*, the “first packet” limitation). *See* Ex. A. Implicit does not base its
 17 undue burden argument on the substance this interrogatory, nor does Implicit contend it was
 18 untimely served under the discovery schedule. Therefore, it is not apparent on what ground
 19 Implicit would seek to excuse itself from responding. In the absence of this information,
 20 Implicit’s motion should be denied.¹

21 **2. Deposition of Balassanian/Implicit on Juniper-Specific 30(b)(6) Topics**

22 Juniper served a Rule 30(b)(6) notice on Implicit on February 9, 2011.² *See* Ex. B. For
 23 efficiency and convenience, the parties agreed to coordinate with the other pending cases and to
 24 divide the topics into two categories: “common” topics that would apply to all defendants, and
 25 “Juniper-specific” topics pertaining to Juniper alone. Implicit agreed to produce a witness on the

26 ¹ In an effort to streamline discovery and resolve this issue without motion practice,
 27 Juniper offered to withdraw its latest set of interrogatories if Implicit would do the same for its
 28 most recent interrogatories (also served in late May). Implicit has not responded to this offer.

² Juniper later served an amended notice on May 17, 2012. *See* Ex. C.

1 common topics for a total of three days. Those three days of depositions—which focused
 2 exclusively on topics not specific to any individual defendant— have now been completed (with
 3 Mr. Balassanian, the inventor of the asserted patents, testifying as Implicit’s corporate designee).
 4 Following the “common” deposition, however, Implicit suddenly announced that each of the three
 5 defendants would need to complete their deposition on all defendant-specific topics—plus the
 6 individual deposition of Mr. Balassanian—in one final combined seven-hour session, *i.e.*, just two
 7 hours and twenty minutes per defendant.

8 Implicit’s sudden change of position is neither reasonable nor fair. Juniper cannot possibly
 9 question Implicit on all Juniper-specific 30(b)(6) topics plus complete the deposition of the named
 10 inventor on the asserted patents in less than two and a half hours. The Juniper-specific subjects
 11 still to be covered include Topic Nos. 1 (Implicit’s infringement contentions), 2 (Implicit’s
 12 statements in pleadings, including basis for filing suit), 4 (basis for injunction request), and 10
 13 (responses to Juniper’s interrogatories and discovery requests).³ *See* Ex. C. In addition, Juniper
 14 has not yet asked been able to question Mr. Balassanian questions in his individual capacity as the
 15 named inventor of the patents. Implicit has not offered any explanation as to why an additional
 16 full day of deposition would present an undue burden. Juniper is sensitive to Mr. Balassanian’s
 17 schedule and has offered to conduct its final day of Juniper-specific questions at a time that would
 18 be convenient for him. Given that Implicit is solely in the business of patent litigation (and Mr.
 19 Balassanian is essentially its only employee), Implicit cannot claim legitimate hardship from
 20 producing the named inventor on its patents for two days of deposition for each of the three
 21 pending cases—including both his testimony as an individual and as a 30(b)(6) designee
 22 of Implicit.

23 **3. Extension of Discovery and Expert Schedule**

24 Finally, Implicit has not demonstrated “good cause” for an extension of the fact and expert
 25 discovery deadlines in this case. Excepting a few depositions scheduled for completion next
 26 week, Implicit has already been able to obtain all the discovery necessary to present its case.

27 ³ Questioning on the substance of Implicit’s 600-page infringement contentions alone
 28 (Topic No. 1) will take multiple hours.

1 Implicit presents no explanation of why this discovery is insufficient, or why it would not been
 2 able to obtain any necessary discovery during the extensive discovery period in this case. As the
 3 Federal Circuit Advisory Council has stated, “Most discovery in patent litigation centers on what
 4 the patent states, how the accused products work, what the prior art discloses, and the proper
 5 calculation of damages.”⁴ Juniper’s discovery efforts to date amply cover these topics:

- 6 • Juniper produced its confidential source code for the accused products for
 7 inspection some time ago, and Implicit’s experts have concluded their review of
 8 that code after several weeks comprising multiple review sessions.
- 9 • Juniper has also produced literally over a million pages of Juniper technical
 10 documents, and provided a knowledgeable senior engineer from Juniper for a full
 11 day of questioning on technical topics.
- 12 • Juniper has produced its prior art and detailed invalidity contentions and charts.
- 13 • By stipulation, Juniper provided summary revenue information for the accused
 14 products, in addition to the prior production of corporate financial data, documents
 15 regarding pricing for the accused products, etc.
- 16 • At Implicit’s request, Juniper has offered and set a date for its Chief Financial
 17 Officer (Robyn Denholm) to be deposed. Juniper has also set a date for Chief
 18 Technology Officer Oliver Tavakoli to be deposed for a full day. Juniper has
 19 further indicated that Mr. Tavakoli will be able to answer questions about the
 20 accused products relating to sales, marketing, training, development, and customer
 21 use and demand. These depositions will be concluded by the end of next week.

22 Given the robust discovery that Juniper has provided in this case on the precise issues that
 23 matter in patent litigation, it is not clear how Implicit can demonstrate the “good cause” required
 24 under Rule 16(b) for its requested extension of the fact and expert discovery deadlines. *See*
 25 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Implicit has not
 26 identified any specific discovery it is lacking. The only example it gives is two deposition notices

27 _____
 28 ⁴ See http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.

1 directed to a pair of high-level Juniper executives, whose testimony it claims is “centrally
 2 relevant” to the case, but without explaining why or even identifying the subject matter of the
 3 anticipated testimony. Juniper has repeatedly offered to produce these senior executives if
 4 Implicit can identify topics for these apex deponents on which other Juniper witnesses—including
 5 the two other high-level Juniper executives scheduled for deposition next week—do not have
 6 knowledge. To date, Implicit has been unable to do so. In any event, the claimed need for apex
 7 depositions does not provide a basis for globally extending all deadlines for fact and expert
 8 discovery by a month. Moreover, by delaying until the end of discovery to even raise these issues,
 9 Implicit has clearly failed to make the required showing of diligence required for any showing of
 10 “good cause” under Rule 16(b). *See id.* (“[i]f that party was not diligent, the inquiry should end”).

11 To the extent that Implicit is requesting an extension of deadlines to provide additional
 12 time to *respond* to Juniper’s discovery requests, Juniper remains willing to extend Implicit’s
 13 deadlines for responding to specific discovery requests, as it has in the past. For example, if
 14 Implicit desires additional time to produce its witness on Juniper-specific topics or to provide
 15 responses to Juniper’s latest set of interrogatories, Juniper is happy to accommodate such a
 16 request. That sort of targeted approach is far preferable than a global 30-day extension, and will
 17 be more effective in terms of forcing the parties to wrap up discovery in this case in the short term.

18 As the Court is well aware, the parties have expended extraordinary resources in
 19 connection with discovery (and unfortunately, discovery disputes) in this case. It is now time to
 20 bring the discovery phase of this case to a close so the parties can prepare for dispositive motion
 21 practice and trial, if necessary. Juniper respectfully submits that the Court should deny Implicit’s
 22 motion in its entirety.

23
 24 DATED: June 12, 2012

Respectfully submitted,

25
 26 /s/ Douglas J. Dixon

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